

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND
MINING
SUBCOMMITTEE**

**Seventy-Fifth Session
May 1, 2009**

The Committee on Natural Resources, Agriculture, and Mining Subcommittee was called to order by Chair David P. Bobzien at 1:03 p.m. on Friday, May 1, 2009, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman David P. Bobzien, Chair
Assemblyman Pete Goicoechea
Assemblyman Tick Segerblom

SUBCOMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

J. Randall Stephenson, Committee Counsel
Charity Fowler, Deputy Legislative Counsel
Jennifer Ruedy, Committee Policy Analyst
Judith Coolbaugh, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

Frank Godecke, representing the Allerman Upper Virginia Ditch Company,
Minden, Nevada

Chair Bobzien:

[Roll was taken.] This bill was heard by the full Committee on Monday, April 27, 2009, and this Subcommittee was established to further consider Senate Bill 170 (1st Reprint).

Senate Bill 170 (1st Reprint): Revises provisions governing payment for work performed for the operation and maintenance of ditches. (BDR 48-1059)

Is there any public testimony to be heard at this time? [There was none.] We will move into the discussion of the bill. We received one amendment from Mr. Michael Pagni, and Mr. Stephenson prepared the proposed amendment ([Exhibit C](#)) to address some of the concerns voiced at the Committee hearing. We will have Mr. Stephenson "walk" us through the amendment.

J. Randall Stephenson, Committee Counsel:

As Mr. Bobzien indicated we received one proposed amendment from Mr. Pagni. If you look at page 2 of the mock-up bill, lines 3-6, the language shown essentially captures the amendment proposed by Mr. Pagni. It puts a 30-day notice provision into the bill before an entity can incur any expenses to perform capital improvements that would alter the fundamental character of the ditch. This 30-day notice requirement does not apply to routine maintenance and operation work performed on the ditch. The language limits the required notice to only be given for projected capital improvements.

The staff met with Mr. Bobzien and we tried to resolve some of the other issues that were raised during the Committee hearing. In particular, on page 1, line 16, and on page 2, lines 1-2, there was concern about the bill's language that says, "...from each person receiving...." A question was raised about the ultimate user of the water who is simply a person who has the right to receive the water. Would those persons have a lien placed on their property because they are a person who is receiving water through the ditch? We revised the phrase to include language that says a person who has the right to receive water directly from the ditch by appropriation or by contract. We tried to narrow the language so these people would share in the cost of maintenance and operation work performed on the ditch by the ditch owner. If these payments are not made, then a lien could be placed on the landowner's property. I would be happy to answer any questions.

Chair Bobzien:

Are there any questions?

Assemblyman Goicoechea:

Does the word "entity" cover a situation that involves more than two people? I am concerned that the entity might not be a ditch or canal company, but it may be a partnership of four or five individuals. I want to make sure the same notice requirement would apply to these people.

Assemblyman Segerblom:

An "entity" can be a corporation, partnership, or a limited partnership. It can be virtually anything.

Assemblyman Goicoechea:

To establish the legislative intent, any time there is even a loose-knit agreement between two or more persons the relationship is considered to be an entity. Is that correct?

Assemblyman Segerblom:

Yes, that is correct.

J. Randall Stephenson:

If I understand your question correctly, Mr. Goicoechea, the word "entity" would include all typical business relationships like corporations, partnerships, and trusts. I would like to clarify for the record that, in a larger sense, *Nevada Revised Statutes* (NRS) 536.040 defines the term "person" for purposes of that section. It is in the preliminary Chapter of the NRS. Many people are unaware of that definition of person, but it is applied throughout the NRS. That definition includes what we consider "natural" persons as well as business entities. Any arrangement that is not a governmental entity or public agency is included within the definition of "person." Therefore, it should include the type of relationship you are describing.

Chair Bobzien:

I want to relate some of the conversation I had with Mr. Pagni earlier today. He regrets he was unable to join us this afternoon. He wanted to make sure that under section 1, subsection 2 the following language was included: "...'Contract' does not include a contract or other agreement between a retail supplier or water and a customer of the supplier who uses any water received pursuant to the contract of agreement solely for residential purposes." I want to clarify with Mr. Stephenson that we are not precluding a ditch company that may be in a relationship with a retail water purveyor. They are not prohibited

from using this mechanism in their relationship with the retail purveyor when they are providing the water on a wholesale basis. Once their costs have been recouped, a retail purveyor can recoup his costs through his usual method of payment, which is a rate schedule.

J. Randall Stephenson:

I would agree that relationship is what we were trying to capture in section 1, subsection 2, paragraph (a). The question is to what extent is the ultimate water user going to be on the "hook" for costs associated with his receipt of water through the ditch. The intent is not to include those people. We are clearly trying to get the costs passed along at the wholesale level. If there is a better way of doing that, we can revise the language.

Chair Bobzien:

Your comments reinforce my understanding of the intent. Mr. Pagni wanted to have that clarification, and also indicated that he may want a revision. We will probably wait until the weekend is over, so he has time to develop language that better targets the intent. He also raised a question about the ultimate purpose of this bill. The crucial part of the bill is in section 2, lines 26 and 27. The existing statute refers to valid liens against the interests of such person or persons. Mr. Pagni and his clients believe it is better to specifically state the word "property". It is difficult to put a lien on a person, but you can put a lien on the person's property for delinquent maintenance payments. This is the problem this legislation is designed to address. Is there anyone in the audience who would like to speak?

Frank Godecke, representing the Allerman Upper Virginia Ditch Company, Minden, Nevada:

We have been working on this bill for awhile with the help of Mr. Pagni. We need to get this bill passed to allow our ditch company to collect assessments owed for administrative expenses. Hence, we had the language added to section 2, subsection 2, paragraph (b) to include labor, accounting, legal, and other administrative costs. As this bill is before us today with the proposed amendment, I am in favor of the bill.

Chair Bobzien:

Have you had an opportunity to review the amendment? We are proposing some changes.

Frank Godecke:

I did not have a chance to read it, but our ditch company manager, Mr. Aiazzi, briefed me on the changes. Basically, we would be required to give a 30-day notice to ditch users if we plan any major capital improvements or expenditures. We have no problem with that language. At our annual meeting, the ditch company usually outlines for our members the goals and objectives of any construction or maintenance project proposed for the ditch.

Chair Bobzien:

Are there any questions? [There were none.] Is there anyone else who would like to speak? I would like to have all parties look over the bill's new language over the weekend, and we can schedule a recommendation hearing at the beginning of next week.

Assemblyman Goicoechea:

The bill with the proposed amendment does address my concerns about establishing a 30-day notice requirement.

Chair Bobzien:

I am closing the hearing on S.B. 170 (R1). This meeting is adjourned [at 1:19 p.m.].

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Natural Resources, Agriculture,
and Mining

Date: May 1, 2009

Time of Meeting: 1:03 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 170 (R1)	C	J. Randall Stephenson	Proposed Amendment